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19 Attorneys for Defendants

20 Northern Dynasty Minerals Ltd.

21 Ronald W. Thiessen

22 Marchand Snyman

23 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

24 VICTOR DIAZ, Individually and on  
25 Behalf of all others similarly situated,

26 Plaintiff,

27 vs.

28 NORTHERN DYNASTY MINERALS  
LTD., RONALD W. THIESSEN, and  
MARCHAND SNYMAN,

Defendants.

Case No.: 2:17-cv-01241-PSG-SS

DEFENDANTS' NOTICE OF MOTION  
AND MOTION TO DISMISS  
PLAINTIFFS' SECOND AMENDED  
CLASS ACTION COMPLAINT (DKT.  
52)

Date: February 25, 2019

Time: 1:30 pm

Place: Courtroom 6A

Judge: Hon. Philip S. Gutierrez

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DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS  
PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on Monday, February 25, 2019, at 1:30 pm,  
3 or as soon thereafter as counsel may be heard, in the United States District Court  
4 for the Central District of California, Los Angeles Division, Courtroom 6A,  
5 located at 350 West First Street, Sixth Floor, Los Angeles, California 90012-4565,  
6 and before the Honorable Philip S. Gutierrez, Defendants Northern Dynasty  
7 Minerals Ltd. (“NDM”), Ronald W. Thiessen, and Marchand Snyman  
8 (collectively, “Defendants”) will move and hereby move this Court to dismiss  
9 Plaintiffs’ Second Amended Class Action Complaint, Dkt. 52, pursuant to Federal  
10 Rule of Civil Procedure 12(b)(6) and the Private Securities Litigation Reform Act  
11 of 1995.

12 This Motion is made upon the following grounds:

13 1. Plaintiffs’ first claim for relief, for alleged violations of Section 10(b)  
14 of the Securities and Exchange Act of 1934, 15 U.S.C. § 78j(b), and  
15 Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, does not  
16 state a claim because:  
17 a. Plaintiffs’ allegations as to scienter fail to meet the heightened  
18 pleading standards under Federal Rule of Civil Procedure 9(b)  
19 and the Private Securities Litigation Reform Act, 15 U.S.C. §  
20 78u-4, because, despite this Court’s clear order dismissing  
21 Plaintiffs’ Corrected Amended Complaint, Dkt. 51 (April 30,  
22 2018), (i) Plaintiffs continue to rely on confidential sources  
23 without providing any information to allow the Court to  
24 determine the sources’ personal knowledge and reliability, (ii)  
25 Plaintiffs’ purportedly new information regarding a draft cost  
26 estimate offers no specific factual allegations to support an  
27 inference that Defendants acted with the requisite intent, and  
28

(iii) the information Plaintiffs contend Defendants hid from investors was in fact publicly available;

- b. Plaintiffs' allegations as to falsity fail to meet the heightened pleading standards under Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4, because (i) Plaintiffs continue to rely on confidential sources without providing any information to allow the Court to determine the sources' personal knowledge and reliability, and (ii) the statements Plaintiffs allege are false are classic examples of unactionable puffery; and
- c. Defendants' alleged misstatements fall under the Private Securities Litigation Reform Act's safe-harbor provision, 15 U.S.C. § 78u-5(c), because Defendants included clear and conspicuous language identifying the statements as forward-looking and cautioning investors about the specific assumptions and risks encompassed by the Second Amended Complaint.

2. Plaintiffs' second claim for relief, for alleged violations of Section 20(b) of the Securities and Exchange Act of 1934, 15 U.S.C. § 78t, must be dismissed because Plaintiffs have not pleaded a viable primary federal securities law claim.

Defendants' Motion to Dismiss is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, Defendants' Request for Judicial Notice, the Declaration of Patricia B. Palacios, the pleadings and papers filed herein, any arguments presented at the time of hearing on this Motion, and such further matters as the Court deems just and proper.

This Motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on August 13, 2018.

1 Dated: August 24, 2018

2 STEPTOE & JOHNSON LLP

3 By: /s/ Philip S. Khinda

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